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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**MICHAEL W. DOBINS
CLERK, U.S. DISTRICT COURT**

UNITED STATES OF AMERICA,
THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois

Plaintiffs,

v.

KERR-MCGEE CHEMICAL LLC,

Defendant.

050 2318

CIVIL ACTION NO.: JUDGE KENNELLY

JUDGE: MAGISTRATE JUDGE LEVIN

COMPLAINT

The United States of America, by the authority of the Attorney General and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("U.S. EPA") and the Secretary of the United States Department of Interior ("DOI"), and the State of Illinois (the "State"), ex rel. Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("IEPA") and the Illinois Department of Natural Resources ("IDNR"), file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action pursuant to Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607(a), as amended ("CERCLA").

2. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), the United States and the State seek to recover from Defendant Kerr-McGee Chemical LLC (“Kerr-McGee”) unreimbursed costs incurred for response activities undertaken in response to the release or threatened release of hazardous substances to, from, or at the following facilities: the Kerr-McGee Kress Creek/West Branch of DuPage River Superfund Site in DuPage County, Illinois (“Kress Creek Site”); the Kerr-McGee Reed-Keppler Park Superfund Site in West Chicago, Illinois (“RKP Site”); the Kerr-McGee Residential Areas Superfund Site in West Chicago and DuPage County, Illinois (“RAS”); and the Sewage Treatment Plant Superfund Site in West Chicago and DuPage County, Illinois (“STP Site”). The United States and the State also seek damages for injury to, destruction of, or loss of natural resources, including the costs of assessing such injury, belonging to, managed by, held in trust by, controlled by or appertaining to the United States and the State, as trustees for those resources, resulting from releases of hazardous substances into or within the Kress Creek, RKP, and STP Sites.

3. Under Section 106 of CERCLA, 42 U.S.C. § 9606, the United States seeks injunctive relief requiring that Kerr-McGee take action to abate conditions at the Kress Creek Site and a segment of the STP Site designated as the STP River Operable Unit (“STP River OU”) that may present an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances into the environment at or from the Kress Creek Site and the STP River OU.

4. Under Section 113(g)(2), 42 U.S.C. § 9613(g)(2), the United States and the State seek a declaratory judgment declaring that Kerr-McGee is liable for any further response costs that the United States or the State may incur in response to the release or threatened release of

hazardous substances at or from the Kress Creek Site, the RAS, the RKP Site, and/or the STP Site, and for any future damages for injury to, destruction of, or loss of natural resources at the Kress Creek, RKP, and STP Sites resulting from such releases of hazardous substances.

5. The Secretary of the Interior has been designated by the President to act as a trustee, on behalf of the public, with respect to a variety of natural resources and their supporting ecosystems. Exec. Order No. 12580 as amended by Exec. Order 12777; 40 C.F.R. § 300.600. The Secretary's trusteeship includes, but is not limited to, the following natural resources and their supporting ecosystems: migratory birds; certain anadromous fish, endangered species and marine mammals; federally owned lands and minerals; and certain federally managed water resources. 40 C.F.R. § 300.600(b)(2).

6. The State of Illinois, ex rel., Lisa Madigan, Attorney General of the State of Illinois, is a state of the United States, a body politic and a sovereign entity. Lisa Madigan is the duly elected, qualified and sworn Attorney General of the State of Illinois, having the powers and duties prescribed by the Illinois Constitution, Art. V., Section 15 (1970), and having all the powers and duties of the Attorney General at common law. The Attorney General possesses both the statutory and common law powers to bring this action on behalf of the State of Illinois, its governmental agencies, and its people.

7. The Illinois Department of Natural Resources is an agency of the State of Illinois and has been designated by the Governor as a co-trustee of the State of Illinois' natural resources.

8. The Illinois Environmental Protection Agency is an agency of the State of Illinois and has been designated by the Governor as a co-trustee of the State of Illinois' natural resources.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, and the parties hereto, pursuant to Sections 106(a), 113(b), and 113(e) of CERCLA, 42 U.S.C. §§ 9606(a), 9613(b) and (e), and 28 U.S.C. §§ 1331 and 1345.

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), because the claims arose and the releases or threatened releases of hazardous substances that give rise to the claims occurred in this district.

DEFENDANT

11. Kerr-McGee is a corporation organized under the laws of the State of Delaware and authorized to do business in the State of Illinois.

12. Kerr-McGee is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

13. Kerr-McGee is a successor to the liability of the Lindsay Light Company, Lindsay Light & Chemical Company, Lindsay Chemical Company, American Potash & Chemical Company, Kerr-McGee Chemical Corp., and Kerr-McGee Chemical Corporation.

GENERAL ALLEGATIONS

14. The Lindsay Light Company established the Rare Earths Facility ("REF") in West Chicago, Illinois, in 1932. The REF extracted thorium and rare earth compounds from ore, a process that produced mill tailings.

15. The mill tailings produced by the REF contained radionuclides, which are hazardous substances under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). These mill

tailings are classified as "11(e)(2) byproduct material" ("byproduct material") under the Atomic Energy Act, 42 U.S.C. § 2014(e)(2).

16. During the course of the operations of the REF (from 1932 to 1973), byproduct material was disposed of at and/or transported to properties in the vicinity of the REF. These vicinity properties include the RAS and the Kress Creek, RKP, and STP Sites.

17. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, U.S. EPA placed the four Sites on the National Priorities List, 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on the following dates: (i) for the RAS and the RKP and STP Sites, August 30, 1990, 55 Fed. Reg. 35502; and (ii) for the Kress Creek Site, February 11, 1991, 56 Fed. Reg. 5598. The four Sites collectively are known as the Kerr-McGee West Chicago NPL Sites.

18. The Kress Creek Site encompasses the following areas in DuPage County:
(i) Kress Creek from the storm sewer outfall located on the east side of the Elgin-Joliet and Eastern Railway to Kress Creek's confluence with the West Branch DuPage River; and (ii) the West Branch DuPage River from its confluence with Kress Creek to the McDowell Dam.

19. The RAS encompasses all properties at which Kerr-McGee has performed and/or will perform work pursuant to a Unilateral Administrative Order ("RAS UAO") issued to Kerr-McGee by U.S. EPA on November 18, 1994. The properties constituting the RAS are the 676 properties listed in Appendix A to this Complaint and any additional properties at which Kerr-McGee is required to perform work under the RAS UAO.

20. The RKP Site encompasses an approximately one hundred acre community park widely-known as Reed-Keppler Park, located in the northwestern portion of West Chicago, Illinois.

21. The STP Site encompasses the following areas in West Chicago and DuPage County: (i) the West Chicago Sewage Treatment Plant located adjacent to the West Branch DuPage River at Illinois Routes 59 and 38, Sarana Drive, West Chicago, Illinois; and (ii) the West Branch DuPage River from the northern boundary of the West Chicago Sewage Treatment Plant to the West Branch's confluence with Kress Creek.

22. Under the authority of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), U.S. EPA issued Unilateral Administrative Orders ("UAOs") to Kerr-McGee on November 18, 1994, and September 26, 1996, for the performance, respectively, of a non-time-critical removal action at the RAS and a time-critical removal action at the RKP Site.

23. Kerr-McGee commenced on-site clean-up work at the RAS in 1995. The work is continuing. As of September 1, 2004, Kerr-McGee had performed clean-up work under the RAS UAO on 673 properties and had removed 110,782 loose cubic yards of radioactively-contaminated materials from the RAS.

24. Kerr-McGee commenced on-site clean-up work at the RKP Site in 1997, and that work is now complete. Kerr-McGee removed 114,652 loose cubic yards of radioactively-contaminated materials from the RKP Site.

25. In July 2003 and March 2002, U.S. EPA completed Remedial Investigation ("RI") Reports for the RAS and the RKP Site, respectively.

26. The decision by U.S. EPA on the remedial action to be implemented at the RAS is embodied in a Record of Decision ("ROD") executed on September 29, 2003, on which the State has given its concurrence. The remedy selected is no further action after completion of the non-time-critical removal action required by the RAS UAO.

27. The decision by U.S. EPA on the remedial action to be implemented at the RKP Site is embodied in a Record of Decision executed on September 13, 2002, on which the State has given its concurrence. The remedy selected is no further action and groundwater monitoring to ensure that future concentrations of total uranium in the RKP Site groundwater meet the Maximum Contaminant Level ("MCL") drinking water standard of 30 micrograms per liter ("ug/L").

28. Pursuant to the authority of Sections 104, 106(a), 107 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, U.S. EPA and Kerr-McGee entered into an Administrative Order on Consent ("AOC") effective on October 16, 2003, for the performance of a time-critical removal action at the upland operable unit of the STP Site ("STP Upland OU"). Kerr-McGee commenced on-site clean-up work at the STP Upland OU in October 2003. That work is continuing. As of September 1, 2004, Kerr-McGee had removed 6,281 loose cubic yards of radioactively-contaminated material from the STP Upland OU.

29. Pursuant to the authority of Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622, U.S. EPA and Kerr-McGee entered into an AOC effective on November 21, 2003, for the performance of a Remedial Investigation and Feasibility Study ("RI/FS") to investigate the nature and extent of contamination at the Kress Creek and STP Sites and to develop and evaluate potential remedial alternatives at the Kress Creek Site and the STP River OU. The RI and FS reports were completed in May of 2004. U.S. EPA also completed human health and ecological risk assessments for the Kress Creek and STP Sites at that time.

30. The decisions by U.S. EPA on the remedial actions to be implemented at the Kress Creek and STP Sites are embodied in two RODs, on which the State has indicated that it

will concur. The remedies selected for the Kress Creek Site and the STP River OU include excavation of targeted soils and sediments throughout the Kress Creek Site and the STP River OU, off-site disposal of these soils and sediments at a permanent, licensed disposal facility, mitigation and restoration of impacted areas, and monitoring and maintenance of the mitigated/restored areas. The remedy selected for the STP Upland OU is no further action after completion of the ongoing removal action.

31. The response actions that U.S. EPA selected for the Kerr-McGee West Chicago NPL Sites are protective of human health and the environment, are consistent with the National Contingency Plan ("NCP"), and are based upon the standards under the Uranium Mill Tailings Radiation Control Act of 1978 ("UMTRCA"), 42 U.S.C. § 7901 et seq., the regulations promulgated thereunder at 40 C.F.R. Part 192, and the Illinois Source Material Milling Facilities Licensing regulations at 32 Ill. Admin. Code Part 332.

32. The United States and the State have incurred unreimbursed response costs exceeding \$20 million in connection with the Kerr-McGee West Chicago NPL Sites.

33. Radionuclides released at or from the Kerr-McGee West Chicago NPL Sites have resulted in an indivisible injury or harm to "natural resources," within the meaning of CERCLA Section 101(16), 42 U.S.C. § 9601(16), including resources under the trusteeship of DOI, IEPA and/or IDNR. Such releases have resulted in harm to, injury to, destruction, or loss of natural resources, including surface water, ground water, fisheries, migratory birds, sediments, habitat, and vegetative and riparian resources at the Kress Creek, RKP and STP Sites.

FIRST CLAIM FOR RELIEF
(Cost Recovery by the United States under CERCLA Section 107(a), 42 U.S.C. § 9607(a))
(All Kerr-McGee West Chicago NPL Sites)

34. The allegations contained in Paragraphs 1 - 33 are realleged and incorporated herein by reference.

35. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (a) Notwithstanding any other provision or rule of law and subject only to the defenses set forth in subsection (b) of this section –
 - (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
 - (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances . . .
 - (4) . . . from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for--
 - (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan. . . .

36. Kerr-McGee, including its predecessors, is a current and past “owner” and “operator” – within the meaning of Sections 101(20) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(20) and 9607(a) – of the REF.

37. The REF and the areas where radionuclides from the REF have come to be located are a “facility” or “facilities” within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

38. Each of the Kerr-McGee West Chicago NPL Sites is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

39. At the time that predecessors to Kerr-McGee owned and operated the REF, "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), including but not limited to radionuclides from the REF, were disposed of onto land surfaces, subsurface strata, water, and other portions of the environment at each of the Kerr-McGee West Chicago NPL Sites.

40. There have been "releases" or threatened releases of "hazardous substances" into the "environment" within the meaning of Sections 101(22), 101(14) and 101(8) of CERCLA, 42 U.S.C. § 9601(22) and (14), at and from the Kerr-McGee West Chicago NPL Sites. More specifically, there have been "releases" and "threatened releases" of radionuclides, which are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at each of those four Sites.

41. As a result of releases or threatened releases of hazardous substances, the United States has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in connection with each of the Kerr-McGee West Chicago NPL Sites.

42. The response costs incurred by the United States in connection with each of the Kerr-McGee West Chicago NPL Sites are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

43. With respect to the Kerr-McGee West Chicago NPL Sites, Kerr-McGee is a successor to persons who: (i) at the time of the disposal of a hazardous substance owned and/or operated a facility at which such hazardous substances were disposed and from which there were

releases of hazardous substances, or threatened releases of hazardous substances, which caused the incurrence of response costs, within the meaning of CERCLA Section 107(a)(2), 42 U.S.C. § 9607(a)(2); and (ii) by contract, agreement, or otherwise arranged for disposal or treatment of hazardous substances, or arranged with a transporter for disposal or treatment of hazardous substances, at a facility owned or operated by another party from which there were releases of hazardous substances, or threatened releases of hazardous substances, which caused the incurrence of response costs, within the meaning of CERCLA Section 107(a)(3), 42 U.S.C. Section 9607(a)(3).

44. Kerr-McGee is liable to the United States pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the response costs, including enforcement costs, incurred by the United States in connection with the Kerr-McGee West Chicago NPL Sites, and for prejudgment interest.

SECOND CLAIM FOR RELIEF
(Cost Recovery by the State under CERCLA Section 107(a), 42 U.S.C. § 9607(a))
(All Kerr-McGee West Chicago NPL Sites)

45. The allegations contained in Paragraphs 1 - 33, 35 - 40, and 43 are realleged and incorporated herein by reference.

46. As a result of releases or threatened releases of hazardous substances at or from the Kerr-McGee West Chicago NPL Sites, the State has incurred "response costs," as defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

47. The response costs incurred by the State in connection with the Kerr-McGee West Chicago NPL Sites are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

48. Kerr-McGee is liable to the State pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the response costs, including enforcement costs, incurred by the State in connection with the Kerr-McGee West Chicago NPL Sites, and for prejudgment interest.

THIRD CLAIM FOR RELIEF
(Natural Resource Damages of the United States and the State
under CERCLA Section 107, 42 U.S.C. § 9607)
(Kress Creek, RKP, and STP Sites)

49. The allegations contained in Paragraphs 1 - 48 are realleged and incorporated herein by reference.

50. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part that a person liable thereunder shall be liable for:

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such release. . . .

51. The release of hazardous substances at or from the Kerr-McGee West Chicago NPL Sites has resulted in injury to, destruction of, or loss of natural resources in the Kress Creek, RKP and STP Sites.

52. Pursuant to Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1), liability for natural resource damages shall be to the United States and to the State for natural resources within the State or belonging to, managed by, controlled by, or appertaining to such State.

53. Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), provides, in relevant part, that the Court shall enter a declaratory judgment on liability for response costs or damages that will be binding on any subsequent action or actions to recover further response costs or damages.

54. Pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), Kerr-McGee is liable to the United States and the State for all damages for injury to, destruction of, loss of, or loss of use of, natural resources under the trusteeship of DOI, IEPA, and/or IDNR within the Kress Creek, RKP and STP Sites, including the reasonable costs of assessing such damages.

FOURTH CLAIM FOR RELIEF
(Injunctive Relief Claim of the United States
under CERCLA Section 106, 42 U.S.C. § 9606)
(Kress Creek Site and STP River OU)

55. The allegations contained in Paragraphs 1 - 54 are realleged and incorporated herein by reference.

56. U.S. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances in the environment at and from the Kress Creek Site and the STP River OU.

57. Pursuant to CERCLA Section 106(a), 42 U.S.C. § 9606(a), Kerr-McGee is liable to the United States for injunctive relief to abate the danger or threat presented by releases or threatened releases of hazardous substances into the environment at and from the Kress Creek Site and the STP River OU.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs the United States of America and the State of Illinois pray that this Court:

1. Enter judgment in favor of the United States and against Kerr-McGee for the response costs incurred by the United States, including prejudgment interest, for response actions related to the Kerr-McGee West Chicago NPL Sites;

2. Enter judgment in favor of the State of Illinois and against Kerr-McGee for the response costs incurred by the State, including prejudgment interest, for response actions related to the Kerr-McGee West Chicago NPL Sites;

3. Find Kerr-McGee liable under CERCLA for all damages for injury to, destruction of, or loss of natural resources at the Kress Creek, RKP, and STP Sites resulting from releases of hazardous substances at and from the Kerr-McGee West Chicago NPL Sites, including for all reasonable costs incurred or to be incurred by the United States and the State in assessing such damages or the injury to, destruction of, or loss of natural resources at the Kress Creek, RKP, and STP Sites, and order Kerr-McGee to pay all such damages, together with prejudgment and post-judgment interest;

4. Enter judgment in favor of the United States and against Kerr-McGee for the performance of response actions to abate the danger or threat presented by releases and threatened releases of hazardous substances into the environment at and from the Kress Creek Site and the STP River OU;

5. Enter a declaratory judgment pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that Kerr-McGee is liable to the United States and the State under

Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for future costs of response actions that may be performed at the Kerr-McGee West Chicago NPL Sites and for future damages for injury to, destruction of, or loss of natural resources at the Kress Creek, RKP, and STP Sites resulting from releases of hazardous substances at and from the Kerr-McGee West Chicago NPL Sites;

6. Award the United States and the State their costs in this action; and
7. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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